

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL CARTER,

Plaintiff,

v.

CASE NO. 07-15379
DISTRICT JUDGE PAUL V. GADOLA
MAGISTRATE JUDGE DONALD A. SCHEER

ANIL PRASAD and
SAVITHRI KAKANI,

Defendants.

_____ /

REPORT AND RECOMMENDATION CONCERNING PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER

This case comes before the Court on Plaintiff's Motion for Temporary Restraining Order (Docket #3). For the reasons stated below, I recommend that the motion be denied.

Plaintiff, while incarcerated at the Gus Harrison Correctional Facility in Adrian, Michigan, filed the instant Complaint, pursuant to 42 U.S.C. § 1983, on December 18, 2007, against the above named defendants, alleging that they had been deliberately indifferent to his serious medical needs. Specifically, Plaintiff asserts that he was denied adequate medical care for a lump on his head. Claiming violations of his Eighth Amendment rights under the federal Constitution, Plaintiff sought injunctive relief as well as compensatory and punitive damages.

In the exercise of its discretion with respect to a motion for preliminary injunction, a district court must give consideration to four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." American Civil Liberties Union of Ky v. McCreary County, Ky., 354 F.3d 438, 445 (6th Cir. 2003)(quoting Rock and Roll Hall of Fame & Museum, Inc. v. Gentile Prods.,

134 F.3d 749, 753 (6th Cir.1998). Federal Rule of Civil Procedure 52(c) "requires a district court to make specific findings concerning each of these four factors, unless fewer are dispositive of the issue." See In re DeLorean Co., 755 F.2d 1223, 1228 (6th Cir. 1985).

In seeking an ex parte preliminary injunction, Plaintiff is essentially asking that this court rule on the merits of his Complaint. Moreover, Plaintiff has failed to provide specific facts from which the inference could be drawn that he is currently exposed to a substantial risk of serious harm beyond that normally to be expected in a prison setting. Plaintiff has made no showing that these defendants have drawn that inference and failed to take appropriate action. On the contrary, Defendant Kakani has filed a response to Plaintiff's Motion for Preliminary Injunction, demonstrating by affidavit that Plaintiff underwent surgery for the removal of a sebaceous cyst, on January 30, 2008, and that his recovery has been uneventful and complete (See Kakani affidavit). Plaintiff has failed to demonstrate a likelihood of success on the merits of his claim, or that the relief requested would serve the public interest. For all the reasons stated, I recommend that Plaintiff's Motion for Temporary Restraining Order be denied.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

Dated: July 2, 2008

CERTIFICATE OF SERVICE

I hereby certify on July 2, 2008 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on July 2, 2008. **Michael Carter.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217